IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22628 of 2004

Between:

N. Vijaya Rao, S/o. Thirupathaiah, Junior Assistant,
O/o. EE, N.S.C.O&M Division, R/o. Jaggaiahpet, Krishna District,
N.S.C., O&M DIVISION, JAGGAIAHPET.

..... PETITIONER

AND

1 The Govt. of A.P., rep. by its Prl. Secretary, Irrigation & CAD Dept.,
A.P.Secretariat, Hyderabad.
2 The Chief Engineer, N.S.P. Canals, Vijayapuri North, Nalgonda District.
3 The Superintending Engineer, N.S.P. Canals,
Miriyalaguda, Nalgonda District.
4 The Superintending Engineer, N.S.P. Canals, Operation and Maintenance
Circle, Tekulapalli, Khamam District.
5 The Executive Engineer, N.S.P. Canals, Operation and Maintenance Division,
Jaggaiahpet, Krishna District.
6 The District Collector, Khammam District at Khamam.
7 The Asst. Director of Horticulture, Coconut Seed Garden, Aswaraopet,
Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue writ, order or direction more in the nature of Certiorari to call for the records relating to and in connection with Memo No. 21703/SER.VI(6)/04-5, dt. 7.9.2004 of the 1st respondent and also the proceedings in Rc.No.A2/2937/04, dt. 8.11.2004 of the 6th respondent and the consequential order passed by the A.P.A.T. in

O.A.No.6451 of 2004 dt. 29.11.2004 and to declare the same as illegal, arbitrary, contrary to Articles 14 and 16 of the Constitution of India and consequently to quash the same and pass appropriate orders.

Counsel for the Petitioner: MR.V.T.M.PRASAD

Counsel for the Respondents: G.P. FOR SERVICES-II.

The Court made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.6451 of 2004, dated 29.11.2004.

2. The petitioner, who is working as Junior Assistant, belongs to V Zone. However, on account of certain administrative omissions, he was transferred to VI Zone and presently he is working at Jaggaiahpet. He was also making requests to the authorities to post him in V Zone, Irrigation Department. Since the said requests were not responded by the authorities, he filed OA.No.5338 of 2003 before the Tribunal and the learned Tribunal, after considering the matter, disposed of the same on 14.2.2003 holding that the petitioner should be posted to VI Zone, viz., Khammam. Considering the directions of the Tribunal, the District Collector, Khammam, issued proceedings Rc.No.A2/2937/04, dated 8.11.2004 allotting the petitioner to the office of the Assistant Director, Horticulture, Coconut Seed Garden, Aswaraopeta for absorption in the existing vacancy. Against the said order, the petitioner filed the present OA. The learned Tribunal disposed of the said OA with the following directions:

> "Learned counsel for the applicant submitted that the matter may be disposed of based on the merits, at the admission stage itself.
>
> In view of this, after going through the record, it is seen that there are no valid grounds to interfere with the orders of the Collector allotting the applicant to the Assistant Director of Horticulture, Coconut Seed Garden, Aswaraopet of Khammam district. These orders are strictly in accordance with the orders issued by this Tribunal. Had the applicant been aggrieved by these orders of the Tribunal, he should have questioned at that point of time itself. Now it is too late in the day for him to question the consequent orders issued by the Government based on the orders of the Tribunal which became final. Thus, viewed from any angle, there is no reason to interfere with the orders of the Collector allotting the applicant to Assistant Director of Horticulture, Coconut Seed Garden, Aswaraopet.

> It is also to be observed here that the seniority of the applicant will have to be counted in the Horticulture Department duly reckoning his service in Irrigation Department as his allotment to Horticulture Department from Irrigation Department is based on the Tribunal's order as well as the Government Orders".

Against the said order of the Tribunal, the petitioner has filed the present Writ Petition.

3. The learned counsel for the petitioner submits that the parent Department of the petitioner is Irrigation Department and therefore he should be retained in Zone V only, but on account of administrative omissions, the petitioner should not be allowed to suffer. He would also submit that the Horticulture Department is a separate Department and if he is absorbed in Horticulture Department, his service interest would be jeopardized. He also submits that the petitioner never made any representation to absorb him in Horticulture Department and therefore the order of the Tribunal is liable to be set aside.

4. On the instructions, the learned Government Pleader for Services-II submits that in pursuance of the orders of the Tribunal, the matter was considered and the Collector issued the impugned order transferring him to Horticulture Department, by which he will reach back to Zone V as Junior Assistant and by virtue of this order his service interest will not be prejudiced in any manner.

5. It is not in dispute that the petitioner belongs to Zone V and therefore he should be accommodated in that zone only. It is also not in dispute that his parent Department is Irrigation Department. Inasmuch as he has been sent to other Zone and by which he is now continuing in Jaggaiahpet, we find that the petitioner should be accommodated in Zone V in Irrigation Department and not in Horticulture Department. Moreover, the petitioner also did not make any request for absorption in Horticulture Department. Under those circumstances, we are inclined to set aside the order of the Collector, dated 8.11.2004 and direct the respondents to post the petitioner in Irrigation Department in Zone V.

6. It is now brought to the notice of this Court that there is no such post available in Zone V of Irrigation Department and therefore it will not be possible for them to accommodate the petitioner in Zone V. Under these circumstances the respondents are directed to retain the petitioner at Jaggaiahpet until such time vacancy arises in Khammam District in Irrigation Department and

thereafter as and when vacancy arises, he should be transferred to the said place, which would meet the requirements of the Tribunal's order.

7. With the directions indicated above, the Writ Petition is disposed of. No costs.

(G.BIKSHAPATHY, J.)

17th December, 2004.

(P.S.NARAYANA, J.)

SSR

Issue copy in three days.

(BO)

To

2 The Chief Engineer, N.S.P. Canals, Vijayapuri North, Nalgonda District.
3 The Superintending Engineer, N.S.P. Canals,
Miriyalaguda, Nalgonda District.
4 The Superintending Engineer, N.S.P. Canals, Operation and Maintenance Circle, Tekulapalli, Khamam District.
5 The Executive Engineer, N.S.P. Canals, Operation and Maintenance Division,
Jaggaiahpet, Krishna District.
6 The District Collector, Khammam District at Khamam.
7 The Asst. Director of Horticulture, Coconut Seed Garden, Aswaraopet,
Khammam District.

8 The Registrar, A.P. Administrative Tribunal, Hyderabad.

9 2CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

10 2CD copies.